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8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA

10 CV 08 2371
 11 TOM AZZARELLO,

12 Plaintiff,) CASE NO.
 13 v.) COMPLAINT FOR BREACH OF
 14 NAVAGILITY LLC, a limited liability) CONTRACT
 15 corporation,)
 16 Defendants.)

17 1. Plaintiff TOM AZZARELLO ("Plaintiff") is an individual residing in Contra Costa
 18 County, California.

19 2. Defendant NAVAGILITY LLC ("Defendant NavAgility") is a limited liability
 20 corporation organized under the laws of New York, and with its principal place of business in New
 21 York, but doing business nationally, through the internet and otherwise.

22 3. Subject matter jurisdiction is proper in this District because Plaintiff is a citizen and
 23 resident of California and defendant NavAgility is a New York limited liability company.

24 4. Personal jurisdiction is proper in this District because Defendant NavAgility, though
 25 its officer, director and majority shareholder, Anthony Di Marco ("Di Marco"), reached out to
 26 Plaintiff, knowing that he resided in California, and asked him to loan money to a New York limited
 27 liability company, and because Defendants accepted a loan from Plaintiff, knowing that the loan was
 28 being made in and from California.

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 31 CLERK'S OFFICE, U.S. DISTRICT COURT
 32 SAN JOSE, CALIFORNIA

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1 5. Venue is proper in this District because Defendant NavAgility solicited the loan that
2 is the subject of this Complaint in California and Plaintiff made the loan that is the subject of this
3 Complaint by sending the money from California.

4 6. Defendant NavAgility was organized to own, manage, develop and offer software
5 and services in the United States and outside the United States and to do any and all things necessary,
6 convenient, or incidental to that purpose.

7 7. Di Marco is and at all relevant times was NavAgility's managing member and the
8 owner of a majority (approximately 75.60%) of Defendant NavAgility's shares.

9 8. By letter dated April 4, 2007, a true and correct copy of which is attached hereto as
10 Exhibit A, Di Marco invited Plaintiff to participate in a bridge loan, pursuant to which Plaintiff was
11 invited to loan money to Defendant NavAbility. By the terms of the bridge loan, any monies loaned
12 would be repaid on October 13, 2007 by a single balloon payment equivalent to two times the face
13 amount of the loan amount.

14 9. On or about April 4, 2007, Plaintiff sent Di Marco an email, stating his acceptance
15 of the stated terms, and also stating that he would loan NavAgility \$100,000 pursuant to those terms.

16 10. On or about April 5, 2007, Plaintiff loaned Defendant NavAgility \$100,000. Plaintiff
17 signed Exhibit A, again indicating his agreement to its stated terms. Plaintiff never agreed to any
18 other terms.

19 11. On or about April 9, 2007, Di Marco signed and returned a copy of Exhibit A,
20 indicating NavAgility's acceptance of and agreement with its terms.

21 12. Plaintiff was not repaid on October 13, 2007 as promised. Plaintiff has made
22 demands for repayment, but repayment has not been made.

FIRST CAUSE OF ACTION

(Breach of Contract)

25 13. Plaintiff incorporates by reference herein the allegations set forth in paragraphs 1
26 through 12.

27 14. Defendant NavAgility was at all relevant times a party to and subject to the terms of
28 the bridge loan contract.

- 1 15. Plaintiff did everything that he was required to do under the bridge loan contract.
- 2 16. All conditions for Defendant NavAgility's performance under the bridge loan contract
- 3 occurred.

4 17. Defendant NavAgility failed to perform under, and breached, the bridge loan contract
5 by failing to make repayment on October 13, 2007, or at any time thereafter, pursuant to the terms
6 of the bridge loan contract.

7 18. Defendant NavAgility's failure to pay constitutes a breach of the bridge loan contract.
8 19. As a result of Defendant NavAgility's breach, Plaintiff has been damaged in the
9 amount of \$200,000.

10 WHEREFORE, Plaintiff prays for judgment and relief as set forth below.

PRAYER FOR RELIEF

1. For compensatory, consequential and/or special damages in an amount to be proved at trial and in excess of this Court's jurisdiction;
 2. For Plaintiff's costs of suit;
 3. For such other relief as the Court deems just and proper.

DATED: May 7, 2008

**LAW OFFICE OF
ROBERT A. HUDDLESTON**

By 
JOAN E. PRESKY, ESQ.
Attorneys for Plaintiff TOM AZZARELLO

Agility

Anthony M. DiMarco
President

NavAgility Bridge Loan Letter of Acceptance

April 4, 2007

Dear Investor,

We are pleased to extend to you an attractive bridge loan offer as per the following terms and conditions:

- Bridge loan amounts will be accepted in \$25,000 increments.
 - The bridge loan will have a single balloon payment on October 13, 2007, equivalent to two times (2x) the face amount of the bridge loan made by you. For example, if you make a bridge loan of \$50,000, you will receive a single payment of \$100,000 on October 13, 2007.
 - There will be no interim interest or principal payments made.
 - There is no equity component of the bridge loan (i.e., your bridge loan creates no additional ownership position and has no impact on your current ownership position).
 - Bridge loan participation will be determined on a first come, first served basis until we have fulfilled a \$300,000 commitment. First come, first served basis will be determined by a verbal (via phone) or email commitment to me, interim to your signed Letter of Acceptance.
 - To maintain your participation rights. Your signed Letter of Acceptance and check need to be received by me no later than April 13, 2007. Please send to mailing address: 16 Nob Hill Road, Poughkeepsie, NY 12603).

Thank you for your continued support.

Sincerely,

Anthony M. DiMarco

Accepted and agreed for on behalf of:	Accepted and agreed for on behalf of: NavAgility, LLC
Bridge Loan Amount (\$):	100,000.00
Signature:	Signature:
	
Name:	Name: Anthony M. DiMarco Title: President
Name: Thomas Azzarello	
Date: 4/5/07	Date: 4/9/07

EXHIBIT A